

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2641

Introduced by Assembly Member Coto
(Coauthor: Senator Ducheny)

February 24, 2006

An act to amend Section 7003 of, *and to add Section 7003.5 to*, the Health and Safety Code, and to amend Section 5097.98 of the Public Resources Code, relating to cemeteries.

LEGISLATIVE COUNSEL'S DIGEST

AB 2641, as amended, Coto. Native American grave sites.

Existing law provides a system for the regulation of cemeteries and defines a cemetery to include, among others, a place where 6 or more human bodies are buried. Violations of provisions relating to the protection of cemeteries is a crime.

This bill would include within the definition of a cemetery, a Native American burial ground, as defined, and would make conforming and technical, nonsubstantive changes. By expanding the definition of a cemetery and related crimes, this bill would impose a state-mandated local program.

Existing law establishes the Native American Heritage Commission and authorizes the commission to bring an action to prevent damage to Native American cemeteries or places of worship. Existing law, the California Native American Grave Protection and Repatriation Act of 2001 requires all state agencies and all museums that receive state funding to inventory Native American human remains and cultural items in their possession for return to the appropriate tribes.

This bill would require a landowner to consult with the most likely descendents, as determined by the commission regarding the preservation of any Native American burial ground discovered on the property owner's land *and would require the landowner to ensure that a site is not further disturbed until prescribed conditions are met.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7003 of the Health and Safety Code is
2 amended to read:
3 7003. "Cemetery" means any of the following:
4 (a) Any of the following that is used or intended to be used
5 and dedicated for cemetery purposes:
6 (1) A burial park, for earth interments.
7 (2) A mausoleum, for crypt or vault interments.
8 ~~(3) A~~
9 (3) A crematory and columbarium, for cinerary interments.
10 (b) A place where six or more human bodies are buried.
11 (c) A Native American burial ground. ~~For the purposes of this~~
12 ~~section, "Native American burial ground" means a place~~
13 ~~containing six or more Native American graves. For the purposes~~
14 ~~of this section, a "Native American grave" means a place~~
15 ~~whether originally below, on, or above the surface of the earth~~
16 ~~including, but not limited to, a rock cairn or a pyre, where human~~
17 ~~remains of a Native American, as identified pursuant to~~
18 ~~subdivision (e) of Section 7050.5, were placed after death as part~~
19 ~~of a death rite or ceremony of Native American culture.~~
20 SEC. 2. Section 7003.5 is added to the Health and Safety
21 Code, to read:
22 7003.5. (a) For the purposes of subdivision (c) of Section
23 7003, "Native American burial ground" means a place
24 containing six or more Native American graves. The physical

1 *relationship of the graves shall be such that it may be reasonably*
2 *concluded that the site constitutes, or constituted in the past, a*
3 *contiguous burial ground. Prior human or other disturbances of*
4 *the site that may have moved human remains or items associated*
5 *with the human remains from their original context shall not*
6 *disqualify the site from classification as a cemetery under Section*
7 *7003. The determination shall be based upon archaeological*
8 *evidence and information obtained from acknowledged*
9 *traditional adherents of a culturally affiliated Native American*
10 *tribe, the most likely descendents designated by the Native*
11 *American Heritage Commission pursuant to subdivision (a) of*
12 *Section 5097.98 of the Public Resources Code, and other expert*
13 *opinion.*

14 *(b) For the purposes of this section, a "Native American*
15 *grave" means a place, whether originally below, on, or above*
16 *the surface of the earth, where human remains, in any state of*
17 *decomposition or skeletal completeness, of a Native American, as*
18 *identified pursuant to subdivision (c) of Section 7050.5, were*
19 *intentionally placed after death whether by inhumation,*
20 *cremation, or other method.*

21 ~~SEC. 2.~~

22 ~~SEC. 3.~~ Section 5097.98 of the Public Resources Code is
23 amended to read:

24 5097.98. (a) Whenever the commission receives notification
25 of a discovery of Native American human remains from a county
26 coroner pursuant to subdivision (c) of Section 7050.5 of the
27 Health and Safety Code, it shall immediately notify those persons
28 it believes to be most likely descended from the deceased Native
29 American. The descendents may, with the permission of the
30 owner of the land, or his or her authorized representative, inspect
31 the site of the discovery of the Native American remains and may
32 recommend to the owner or the person responsible for the
33 excavation work means for treatment or disposition, with
34 appropriate dignity, of the human remains and any associated
35 grave goods. The descendents shall complete their inspection and
36 make their recommendation within 24 hours of their notification
37 by the Native American Heritage Commission. The
38 recommendation may include the nondestructive removal and
39 analysis of human remains and items associated with Native
40 American burials.

(b) Whenever the commission is unable to identify a descendent, or the descendent identified fails to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the descendent and the mediation provided for in subdivision (k) of Section 5097.94 fails to provide measures acceptable to the landowner, the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(c) The inadvertent discovery of a Native American burial ground, as defined in ~~subdivision (e) of Section 7003 (a) of Section 7003.5~~ of the Health and Safety Code, *during ground disturbing land development activity*, is a significant unanticipated discovery requiring additional consultation. The landowner or his or her authorized representative shall consult with the most likely descendent, as designated by the commission and shall address every feasible option for the preservation of the cemetery, in situ, including, but not limited to, any items associated with a Native American grave. *Upon the discovery of possible Native American remains, the landowner shall ensure that the site is not damaged or disturbed by further development activity until a determination is made whether the site is a cemetery pursuant to Section 7003 of the Health and Safety Code, and the process set forth in this section is completed.*

(d) Notwithstanding the provisions of Section 5097.9, this section, including those actions taken by the landowner or his or her authorized representative to implement this section and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94, shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(e) Notwithstanding Section 30244, this section, including those actions taken by the landowner or his or her authorized representative to implement this section, and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94, shall be exempt from the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)).

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the
6 penalty for a crime or infraction, within the meaning of Section
7 17556 of the Government Code, or changes the definition of a
8 crime within the meaning of Section 6 of Article XIII B of the
9 California Constitution.

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